

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



April 22, 2004

Agenda ID # 3428
Alternate to Agenda ID # 3425
Ratesetting
May 6, 2004

TO: PARTIES OF RECORD IN APPLICATION 00-11-038 ET AL

Enclosed is the Alternate Draft Decision of Commissioner Lynch to the Draft Decision of Administrative Law Judge (ALJ) Allen, mailed to the parties on April 6, 2004.

When the Commission acts on the draft or alternate decision, it may adopt all or part of it as written, amend or modify it, or set aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Public Utilities Code Section 311(e) requires that an alternate to a draft decision be served on all parties, and be subject to public review and comment prior to a vote of the Commission. Rule 77.6(d) provides that comments on the alternate draft decision be filed at least seven days before the Commission meeting.

Comments on the alternate decision must be filed and served April 29, 2004. Reply comments are due May 3, 2004.

Pursuant to Rule 77.3 comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service. Please also provide an electronic copy of the comments and reply comments to Michael S. Campbell at msc@cpuc.ca.gov.

/s/ ANGELA K. MINKIN
by Philip S. Weismehl
Angela K. Minkin, Chief
Administrative Law Judge

ANG:mel

Enclosure

Decision **ALTERNATE DRAFT DECISION OF COMMISSIONER LYNCH**
(Mailed 04/22/2004)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.

Application 00-11-038
(Filed November 16, 2000)

Emergency Application of Pacific Gas and Electric Company to Adopt a Rate Stabilization Plan.
(U 39 E)

Application 00-11-056
(Filed November 22, 2000)

Petition of THE UTILITY REFORM NETWORK for Modification of Resolution E-3527.

Application 00-10-028
(Filed October 17, 2000)

ORDER GRANTING PETITION TO MODIFY DECISION 04-01-028

Summary

Southern California Edison (SCE) requests that the Commission change the allocation of the Department of Water Resources' (DWR) Bond Charge revenue requirement. SCE argues that the current equal-cents-per-kilowatt hour

allocation methodology, adopted in D.02-10-063¹ and continued unchanged in D.04-01-028, is inequitable. SCE believes the allocation of the bond costs should be changed so that it matches the allocation of the bond proceeds.

Pacific Gas & Electric (PG&E) and San Diego Gas & Electric (SDG&E) oppose SCE's request in written replies to SCE's petition (no hearings were held). PG&E and SDG&E argue that the current allocation methodology is fair and equitable because DWR's actions to stabilize the grid benefited all electricity consumers in the state, and changing the allocation now would unjustly benefit SCE's customers. We do not find this argument by PG&E and SDG&E compelling because the issue is not whether DWR's actions provided a more stable grid, but how the disbursement of bond proceeds provided financial benefits to each IOU.

We agree with SCE's argument that the allocation methodology for the Bond Charge revenue requirement should be consistent with the allocation of the bond proceeds. SCE's Petition to Modify is adopted.

Discussion

SCE describes the methodologies the PUC used to arrive at the Bond Charges set in D.04-01-028 and makes three arguments in support of its request: the current allocation of the Bond Charge is inequitable, the current allocation is not based on cost causation, and the existing allocation violates Public Utilities Code § 451.

¹ D.02-10-063 was subsequently modified in D.02-11-074 and D.02-12-082 on other grounds.

Allocation Methodologies

SCE's Petition to Modify describes in detail the different methodologies used for allocating the revenue from DWR's bond sales, and the allocation rationale used for determining how much each utility's customers must pay for DWR power. The rationale for the various methodologies is less relevant to SCE's claims of inequity than the simple fact that the amounts of dollars SCE received from DWR's bonds and the amount SCE's customers must pay back are different.

The cash from DWR's bond sales were allocated to each utility based upon the proportion of DWR power each utility received. Therefore, because SCE was the recipient of 37.8% of DWR's total energy, SCE received 37.8% of the DWR's net bond proceeds.

The methodology used to allocate the cost of DWR's power (Power Charge) was based upon the total amount of energy consumed within each utility's service territory. On this basis, because SCE consumes 44.4% of the total energy² ("total energy" equals the sum of consumption within the territories of PG&E, SDG&E, and SCE), SCE was assigned 44.4% of DWR's power charges. This methodology results in an equal cents per kilowatt-hour bond charge –the customer, regardless what utility serves them, pays the same surcharge on each unit of energy they consume.

The PUC, in D.02-10-063, set the Bond Charge using the same methodology as the Power Charge, rather than dividing responsibility for repayment of DWR's bonds on the way the bond revenues were divided. We are

² The total energy consumed within a utility's service territory is commonly referred to as "total utility sales."

addressing the disconnect between bond revenues and bond repayment that in this decision.

The argument for basing the Bond Charge on the total energy consumed is that the Bond Charge pays for the benefit of a stable electric grid, which is a “proceed” much broader than what can be measured just by the amount of energy flowing through a customer’s meter (measured in kilowatt-hours, or kWh). But by the same token, the bonds were sold to defray DWR’s costs for providing reliability. Therefore, to fully embrace this logic, the bond revenues should have been allocated based on overall utility sales. Data in SCE’s Petition shows that going back and revising the bond revenue allocation decision would require PG&E and SDG&E to write checks (of \$452,960,000 and \$78,310,000 respectively)³ to SCE. Although it would be within our authority to do so, we shall not require such payments. We shall grant SCE’s request to “correct the allocation of the California Department of Water Resources’ (DWR) Bond Charge Revenue Requirement (BCRR) to match the bond proceeds allocated to Investor Owned Utility customers” on an going forward basis. (Id, pp. 1-2)

SCE argues that the Bond Charge should be based on the specific benefits of the bond revenues allocated to each utility. DWR actions may have provided broad benefits to all customers, no matter what utility provided the power; but SCE’s customers received a \$3.062 billion benefit from DWR’s bond sales and D.04-04-028 kept SCE’s customer bond charge revenue requirement at \$3.595 billion -- \$532 million more than SCE received from DWR’s bond proceeds.

³ SCE Petition to Modify filed January 21, 2004. p. 7

The current equal-cents-per-kWh allocation of the Bond Charges in inequitable, and we modify D.04-01-028 to require the Bond Charges be based on the same methodology used to determine the allocation of DWR's net bond proceeds.

Equity

SCE's arguments contend primarily that the existing allocation of DWR's Bond Charge revenue requirement is simply unfair. According to SCE, the existing allocation methodology results in SCE paying approximately 45% of the Bond Charge revenue requirement while only receiving the benefits of approximately 37% of the bond proceeds. (SCE Petition, p. 9) This inequity requires SCE customers to pay an additional \$60 million per year more to repay DWR bonds than SCE customers would if the allocation methodologies were consistent. Over the life of the bonds, Edison ratepayers will pay \$1.2 billion dollars (on a nominal basis) to repay bonds that were not used to defray SCE costs.

The Bond Charge revenue requirement is currently allocated on an equal-cents-per-kWh basis, which was adopted in D.02-10-063. In D.04-01-028, this Commission declined to adopt SCE's proposal to change that allocation methodology.⁴

The policy reasons the Commission cited in adopting the equal-cents-per-kWh allocation in 2002 included: (1) the long period of time over which the Bond

⁴ D.02-10-063 was subject to the "120 day clock" established by the legislature in AB1X. AB1X requires the PUC to approve DWR's revenue requirements within 120 days of submission by DWR. D.02-10-063 was approved at the latest meeting the PUC could act without violating the law.

Charges would be collected; (2) the benefits of a stable electricity grid, which benefited everyone, including those who did not receive any power from DWR at that time; (3) the lack of a relationship between the cost and price of producing electricity at the height of the energy crisis, when the bond costs were incurred; and (4) the extraordinary nature of the bond costs. (D.04-02-028, p. 5, citing D.02-12-082.)

In D.02-02-052, the Commission took different policy considerations into account when allocating the bond revenues. In this case, the net bond revenues were allocated to the utilities based on the amount of DWR energy consumed in each utility's service territory.

PG&E argues that the long period of time over which the Bond Charges would be collected meant that there would be a disconnect between the future customers who are paying for the DWR Bond Charges, and those customers in 2001-2002 who received power purchased by DWR. PG&E claims that the Commission recognized that this "broke the link" between the customers that received DWR power in 2001-2002 and the future customers responsible for repaying DWR. (PG&E Response, pp. 8-9, citing D.02-12-082.) The crux of this argument is that there is not a direct correlation between the customer paying DWR, and the customer getting the "proceeds" in the form of energy bought by DWR. We disagree. We find that the result of using different allocation methodologies for disbursing bond revenues and assigning responsibility for bond repayment creates an unfair burden on SCE's customers. The methodologies should be applied consistently to be equitable, and not unfairly to benefit or burden ratepayers of any utility.

Cost Causation

SCE argues that the allocation of Bond Charges should be based on cost-causation principles.

SCE argues that cost causation is the guiding principle that the Commission has used in allocating DWR costs. As SCE argues, “the Commission has adopted a cost-causation principle for the allocation of DWR’s costs.” (SCE Petition, p. 5.) From this premise, SCE then explains that the existing allocation of the Bond Charge on a equal-cents-per-kWh basis is an anomaly, a departure from the fundamental principle of cost causation. SCE concludes that “[t]he Decision is inconsistent, and thus arbitrary, in its finding that it is adopting a cost-based allocation.” (Id., p.8.)

In it’s reply, PG&E cites the Commission’s denial of SCE’s petition for rehearing of the Commission’s original decision (D.04-01-028), which determined that SCE had not provided “a convincing explanation why the Bond Charge, which pays for costs incurred in 2001 to stabilize California’s electricity grid, should be treated in the same manner as the Power Charge, which pays for ongoing purchases made by DWR.” (PG&E Reply, p. 12.) PG&E’s argument is misplaced. Rather than SCE bearing the burden of proof, to demonstrate why this Commission’s decision on the imposition of the same DWR Bond Charge should be consistent, the Commission has the responsibility to demonstrate why it should shift its analysis and methodology when turning from the allocation of bond revenues to the allocation of the bond repayment charge among utility service territories. This Commission’s statutory responsibility requires the Commission not to discriminate. SCE merely points out the discrimination inherent in the Commission’s shifting methodology.

SCE's Petition to Modify makes it clear that SCE is not seeking to have the Bond Charge treated in the same manner as the Power Charge. SCE's petition involves only the inconsistencies between the bond charge allocation and the utilities in relation to bond revenue allocation among the utilities. The bond revenues were not allocated on an equal-cents-per-kWh basis; they were allocated based on the proportion of DWR power each utility received. The Bond Charge is levied on each IOUs customer base to collect the necessary revenues to repay the DWR bonds. It is on this basis that we must consider the cost causation principles; and recognize that the cost that is being recovered via the Bond Charge is the cost of DWR's bonds, and the principles of cost causation require us to base the Bond Charge on how the bond revenues (the cost being recovered) were allocated to each utility. (SCE Petition, p. 1.)

SDG&E's and PG&E's comments largely try to maintain the fractured logic that has resulted in their customers enjoying reduced Bond Charge payments at the expense of SCE's customers. They argue that we should accept the theory that the benefits of DWR's actions were broadly applied to all customers, and thus we should maintain the Bond Charge allocation on an equal cents per kilowatt-hour basis.⁵ If we were to apply this logic to the allocation of the bond revenues on the same basis, we would be forced to find that SCE had been under-allocated DWR bond revenues. By granting SCE's petition, however, we simply agree with SCE that the Bond Charge should follow cost-causation principles, and should be allocated on the same basis as the bond revenues.

⁵ SDG&E Reply, p. 2. and PG&E Reply, pp. 4-5.

Public Utilities Code Section 451

SCE claims that the existing allocation of the Bond Charge violates Public Utilities Code § 451, on the grounds that the rates resulting from that allocation are not just and reasonable, as required by the statute.

As discussed above, maintaining a Bond Charge allocation methodology that is different than the methodology used to divide DWR's bond revenues violates the principles of cost causation, and results in SCE's customers paying for benefits (cash from DWR bond sales) that SCE customers never received. Denying SCE's petition would result in SCE ratepayers paying 45% of DWR's bond costs, when they only received 38% of the cash available from DWR's bond sales.⁶

In its reply, SDG&E argues that "SCE has not shown that its customers received less benefit than customers of the SGE and PG&E from a stable electric grid, it has not demonstrated that 'requiring all customers who are similarly situated to pay the same amount for a benefit that they all receive is legally unreasonable.'" (SDG&E Reply, p. 7, citing D.04-02-028.) As discussed in the previous section, the issue is not whether DWR's actions provided a more stable grid, but whether the disbursement of bond proceeds provided financial benefits to each IOU. PG&E and SDG&E have focused on the differences between the Power Charge and the Bond Charge, and how DWR's actions to stabilize the market benefited the customers of all IOUs. Neither utility has demonstrated, that the disbursement of bond revenues in general benefited all IOUs equally. In fact the disbursement of the bond monies was not spread based on the total

⁶ SCE Petition. p. 9

energy consumed by the customers of each utility, but the current equal-cents-per-kWh bond charge would require SCE's customers to pay more (while PG&E and SDG&E customers pay less) than they in fact received. Thus, we find D.04-01-028 violates § 415 and the existing Bond Charge is unjust and unreasonable.

Comments on Alternate Draft Decision

The draft alternate decision of Commissioner Lynch in this matter was mailed to the parties in accordance with Section 311(e) of the Public Utilities Code and Rule 77.6(d) of the Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____.

Assignment of Proceedings

Loretta M. Lynch and Geoffrey F. Brown are the Assigned Commissioners and Peter V. Allen is the assigned Administrative Law Judge for this phase of this proceeding.

Findings of Fact:

1. SCE has shown that D.04-01-028 is inequitable. The methodology used to determine how the proceeds from the DWR bonds were allocated should be consistent with the methodology for setting how those DWR bonds are repaid.
2. The DWR Bond Charge Revenue Requirement should be allocated based on each utility's share of net bond proceeds.
3. No hearings were held regarding SCE's Petition to Modify D. 04-01-028.
4. DWR's actions to stabilize the market benefited the customers of all IOUs, but no party made any argument that the disbursement of bond revenues in general benefited all IOUs equally.
5. Revising the Bond Allocation methodology to a cents-per-kilowatt-hour basis would require PG&E and SDG&E to make payments to SCE of \$453 million and \$79 million, respectively.
6. The Bond Charge in D.04-01-028 was allocated on an equal-cents-per-kWh basis, whereas DWR's net bond revenues were allocated to the IOUs using the same methodology as the Power Charge Revenue Requirement adopted in D.02-02-052.

7. D.04-01-028 violates principles of cost causation.
8. D.04-01-028 violates Public Utilities Code § 451.

Conclusions of Law

1. D.04-01-028 is modified to change the Bond Charge allocation methodology. Going forward, DWR's Bond Charge Revenue Requirement will now be allocated in proportion to each utility's share of net bond proceeds.

O R D E R

IT IS ORDERED that Southern California Edison's Petition to Modify Decision 04-01-028 is granted.

This order is effective today.

Dated _____, at San Francisco, California.

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties of which an electronic mail address has been provided; this day served a true copy of the original attached Alternate Draft Decision of Commissioner Lynch] on all parties of record for proceeding A.00-11-038 et al or their attorneys of record.

Dated April 22, 2004, at San Francisco, California.

/s/ ERNESTO MELENDEZ

Ernesto Melendez

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.